



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date Amended:	05/04/11	Bill No:	<a href="#">AB 1424</a>
Tax Program:	Sales and Use Motor Vehicle Fuel Cigarette & Tobacco Products Diesel Fuel	Author:	Committee on Revenue and Taxation
Sponsor:	BOE	Code Sections:	See below
Related Bills:		Effective Date:	01/01/12

**BILL SUMMARY**

This bill contains **Board of Equalization (BOE)-sponsored provisions** for the sales and use tax and special taxes and fees programs, to do all the following:

- Amend Civil Code Sections 1793.2 and 1793.25 to allow the BOE to reimburse a manufacturer of a new motor vehicle for the use tax the manufacturer refunds to a buyer or lessee when the new motor vehicle is reacquired by the manufacturer pursuant to California's "Lemon Law." (Technical)
- Amend Revenue and Taxation Code Sections 6055 and 6203.5 of the Sales and Use Tax Law to remove the requirement that retailers and lenders file an election form with the BOE prior to claiming a bad debt in the case of accounts held by a lender that have been found worthless and written off by the lender. (Housekeeping)
- Amend Revenue and Taxation Code Section 6248 of the Sales and Use Tax Law to make a technical clarification to the repair, retrofit, and modification exception related to the 12-month rebuttable presumption for vessels purchased outside this state. (Technical)
- Amend Revenue and Taxation Code Section 7096 of the Sales and Use Tax Law to allow a taxpayer to file a claim for reimbursement of bank charges and third party check charges incurred by the taxpayer as the direct result of an erroneous processing action or erroneous collection action by the BOE. (Housekeeping)
- Add Sections 7157, 8407, 30483, and 60709 to, and amend Sections 7101, 8351, and 30474 of, the Revenue and Taxation Code to provide the BOE and the State Controller's Office with express authority to collect orders of restitution awarded to the BOE in criminal proceedings in the same manner as tax liabilities. These provisions affect the Sales and Use Tax, Motor Vehicle Fuel Tax, Cigarette and Tobacco Products Tax, and Diesel Fuel Tax Laws.

**Summary of Amendments**

Since the previous analysis, this bill was amended to clarify that amounts collected for restitution shall be deposited in the same manner as other amounts that are collected by the BOE.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

**ANALYSIS****Lemon Law: Use Tax Reimbursement**  
*Civil Code Sections 1793.2 and 1793.25***CURRENT LAW**

Under existing law, the Song-Beverly Consumer Warranty Act (beginning with Civil Code Section 1790) contains provisions that provide warranty protections to purchasers of both new and used consumer goods. The act includes provisions that require compensation to California consumers of defective new motor vehicles – provisions colloquially referred to as California’s “Lemon Law.” These Civil Code provisions specify that if a manufacturer or its representative in this state, such as an authorized dealer, is unable to service or repair a new motor vehicle to meet the terms of an express written warranty after a reasonable number of repair attempts, the manufacturer is required promptly to replace the vehicle or make restitution to the buyer.

Under Civil Code Section 1793.25, in the case of restitution, a manufacturer that has complied with these “Lemon Law” provisions is required to make restitution in an amount equal to the actual price paid or payable by the buyer, including, among other charges, sales tax, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale. This section further requires the BOE to reimburse the manufacturer for an amount equal to the sales tax included in the restitution. The “Lemon Law” is silent with respect to restitution involving use tax.

Under existing Sales and Use Tax Law, a lease of tangible personal property, including a lease of a motor vehicle, is, with exceptions not relevant here, a “sale” and a “purchase” for purposes of that law. For a lease that is a “sale” and a “purchase,” the tax is measured by the amount of rental paid. However, the applicable tax is generally use tax, not sales tax, and the lessor is required to collect the use tax from the lessee at the time the amount of rent is paid.

The cases of *Chrysler LLC v. State Board of Equalization* (Super. Ct. San Francisco County, 2008, No. CGC-07-459702) and *Mercedes Benz USA LLC v. State Board of Equalization* (Super. Ct. San Francisco County, 2008, No. CGC 08-471310) involved the leases of new motor vehicles on which use tax had been paid by the lessees. The vehicles were reacquired by the lessor/manufacturer pursuant to California’s “Lemon Law,” and the lessor/ manufacturer refunded the use tax to the lessees that they had paid. The lessor/manufacturer then sought reimbursement from the BOE for the use tax it refunded. The BOE denied the claim because Section 1793.25 only authorized the BOE to reimburse the manufacturer for sales tax refunded to buyers in “Lemon Law” situations. On December 9, 2008, Judge Patrick J. Mahoney ruled in favor of Chrysler and determined that there was no reason that use taxes should be treated differently from sales taxes in these situations. The judge ordered the BOE to reimburse the lessor/manufacturer for the use taxes it refunded to lessees of new motor vehicles it repurchased or replaced pursuant to California’s “Lemon Law.”

**PROPOSED LAW**

This bill would amend Civil Code Sections 1793.2 and 1793.25 to authorize the BOE to reimburse a manufacturer of a new motor vehicle for either sales tax or use tax that the manufacturer refunds the buyer or lessee of a new motor vehicle when it provides a

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.*

replacement vehicle or includes in making restitution to the buyer or lessee pursuant to these Civil Code provisions. This bill would make other nonsubstantive and conforming changes to these Civil Code provisions.

The bill would also add an uncodified provision to specify that these amendments are declaratory of existing law.

#### COMMENT

This bill simply makes conforming changes to California's Lemon Law in light of the ruling in the cited case.

<p><b>Bad Debt Election Form Requirement Repeal</b> <i>Revenue and Taxation Code Sections 6055 and 6203.5</i></p>
---

#### CURRENT LAW

Under existing law Sections 6055 and 6203.5 of the Sales and Use Tax Law allow a retailer to be relieved of the liability for the sale or use tax when the measure of tax is represented by amounts that have been found to be worthless and charged off for income tax purposes. These sections also allow retailers who sell their accounts receivables or lenders who purchase them to claim a refund or claim a deduction on sales and use tax returns for the portion of the accounts receivable which is written off as worthless. In such circumstances, existing law requires the retailer and the lender to file an election form with the BOE signed by both parties designating which party is entitled to claim the bad debt loss prior to claiming a deduction or refund.

#### PROPOSED LAW

This bill would amend Sections 6055 and 6203.5 to remove the requirement that the election form be filed with the BOE and to require instead that the retailer and lender retain the election.

#### COMMENT

The BOE has been administering these provisions for approximately 10 years, and these signed election forms have not been of any assistance in verifying the validity of the claims for bad debt losses, nor provided any valuable benefit to the BOE's audit program. The BOE sees no compelling reason to continue warehousing these election forms, or for burdening taxpayers with filing this paperwork with the BOE. Instead, the bill would require that the election form simply be retained by both the retailer and the lender.

**Vessels Purchased Outside this State**  
*Revenue and Taxation Code Section 6248***CURRENT LAW**

Under existing law, Revenue and Taxation Code Section 6248 of the Sales and Use Tax Law provides a rebuttable presumption that any vehicle, vessel, or aircraft purchased outside California that is brought into this state within 12 months of purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax. The law provides an exception, however, for vehicles, vessels, and aircraft brought back into California within the first 12 months of ownership for the purpose of repair, retrofit, or modification (RRM). If the RRM meets specified criteria, the vehicle, vessel or aircraft will not become subject to use tax solely on the basis that it was brought into California within the first 12 months of ownership. One of these criteria is, for vessels, that the RRM must be conducted by a repair facility that holds an appropriate seller's permit issued by the BOE and is licensed to do business *by the county* in which it is located. This criterion was added by BOE-sponsored AB 1547 (Ch. 545, Stats. 2009) in order to clarify that the RRM must be performed by a legitimate repair facility; otherwise taxpayers could regularly purchase minor parts or accessories and make their own repairs or modifications over an extended period of time while storing the vessel in California and avoiding California use tax.

**PROPOSED LAW**

This bill would amend Revenue and Taxation Code Section 6248 to clarify that in the case of a vessel purchased outside this state and brought into this state within the first 12 months of ownership for the exclusive purpose of RRM, the vessel will not be considered purchased for use in California if the RRM is performed by a repair facility that holds an appropriate permit issued by the BOE and is licensed to do business by the county, *city, or city and county in which it is located if the city, county, or city and county so requires.*

**COMMENTS**

Most local jurisdictions in California require businesses to hold a business license. However, when a business is located within the city's jurisdiction, generally, if a business license is required, the city, rather than the county, licenses the business. Also, in some instances, a business located within an unincorporated area of a county, is not required to hold a business license at all (such as in Shasta County, Santa Clara County, and San Diego County). Consequently, the specific wording of the statute requiring that the repair facility be licensed to do business *by the county* in which it is located is not always fitting. This could inadvertently subject a purchaser to use tax when the purchaser brings a vessel purchased outside this state back into California within the first 12 months of ownership and uses a repair facility that either is not required to hold a business license, or has an appropriate business license, but not one issued by a county.

This bill would clarify that as long as the repair facility has a permit with the BOE and is licensed by the city, county, or city and county, if so required, the taxpayer's vessel purchase would meet the criteria for the exception related to the 12-month rebuttable presumption, and would not be subject to use tax (assuming all other requirements not pertinent to this discussion are met).

**Claim for Bank Charge Reimbursement**  
*Revenue and Taxation Code Section 7096***CURRENT LAW**

Under current law, the BOE is authorized, as part of its administrative duties with respect to the collection of taxes, to seize property of a delinquent taxpayer. Existing law authorizes the BOE to issue a levy or order to specified financial institutions to withhold and remit credits or personal property of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

However, under Revenue and Taxation Code Section 7096, if the BOE erroneously issues a levy or notice to withhold, and that error results in bank charges or third party check charges incurred by a taxpayer, the taxpayer may file a claim with the BOE for reimbursement of those charges. Bank and third party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those actually paid by the taxpayer and not waived or reimbursed by the financial institution.

**PROPOSED LAW**

This bill would amend Revenue and Taxation Code Section 7096 to expressly provide that, in addition to reimbursement of bank or third party check charges incurred by a taxpayer as the direct result of an erroneous levy or notice to withhold, a taxpayer may claim reimbursement for bank and third party check charges due to an erroneous processing action or erroneous collection action by the BOE.

**COMMENTS**

Occasionally, an erroneous BOE action has resulted in the imposition of bank or third party check charges and the particular erroneous BOE action was not technically a result of a BOE levy or notice to withhold. For example, because of a BOE error, a taxpayer's account has been double-debited when an electronically-transferred payment made in connection with an installment payment agreement was credited erroneously by the BOE to another taxpayer's account. Due to the double payment, the taxpayer's account had insufficient funds, which resulted in bank fees for overdrafts. While the BOE is able to reverse the erroneous debit, the law contains no express statutory authority to reimburse the taxpayer for any bank-imposed fees or third party check charges the taxpayer may have incurred due to the error.

It is only fair and equitable to reimburse taxpayers for bank and third party check charges when those charges are directly attributable to a BOE error, and to no fault of the taxpayer. This proposed change is consistent the intent of the original legislation that authorized the BOE to reimburse taxpayers for such charges stemming from BOE errors. Also, these proposed amendments are consistent with provisions in Revenue and Taxation Code Section 21018 administered by the FTB. The FTB sponsored AB 1767 (Ch. 349, Stats. 2005, Assembly Revenue and Taxation Committee), to specifically allow taxpayers to claim reimbursement for bank charges incurred by taxpayers through similar types of FTB processing and collection errors.

**Orders of Restitution**

*Revenue and Taxation Code Sections 7101,  
7157, 8351, 8407, 30474, 30483, and 60709*

**CURRENT LAW**

Under current law, victims of crimes are entitled to restitution under Section 28 of Article 1 of the California Constitution and Penal Code Section 1202.4, which provide that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted. Courts are required to award an order of restitution from a convicted offender in every case that a crime victim suffers a loss, unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. The law provides that an offender's inability to pay shall not be a compelling and extraordinary reason (Penal Code Section 1202.4, subdivisions (f) and (g)).

Under existing law, the BOE may refer cases for criminal prosecution to state courts against a person for certain offenses and the court may order restitution. The most common offenses referred by the BOE for criminal prosecution include the following:

- Tax evasion,
- Operating without a permit,
- Possession and sale of unstamped cigarettes,
- Unlicensed sales of cigarettes and tobacco products, and
- Grand theft.

The BOE may also obtain federal court orders of restitution for criminal charges referred to a federal court. The most common charges pursued in federal court include federal offenses such as:

- Wire fraud,
- Mail fraud, and
- Transportation and sale of contraband tobacco products.

Criminal restitution is a permanent order that does not expire and is not dischargeable through bankruptcy.

Under existing Penal Code Sections 1202.4, 1214, and 1214.2, enforcement of a criminal restitution order for tax, penalties, fines and investigative costs are enforceable as if the order were a civil judgment.

Orders of restitution issued in a federal criminal action for certain crimes are enforceable in the same manner as a civil judgment.

For the State (as a victim of the crime), a restitution order covers its economic loss from a person convicted of a crime. The State's economic loss in these cases is the amount of tax, including applicable penalties, interest, and costs of investigation or prosecution that the taxpayer failed to pay as a result of the crime for which the taxpayer is found guilty.

Under existing Sales and Use Tax Law (Sections 6701 through 6832.6), Cigarette and Tobacco Products Tax Law (Sections 30301 through 30358), and Diesel Fuel Tax Law (Sections 60401 through 60493.5), the BOE is authorized to use specified collection tools in the pursuit of delinquent liabilities, including tax, interest and penalties. With respect to the Motor Vehicle Fuel Tax Law, administrative and collection responsibilities

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

are split between the BOE and the State Controller's Office (SCO), respectively. Under existing Motor Vehicle Fuel Tax Law (Sections 7851 through 7983), the SCO has the statutory responsibility for collection of amounts due and is authorized to use the same tools as is the BOE to collect delinquent liabilities. The collections methods for both the BOE and SCO include, but are not limited to, the ability to issue a levy, file a lien, and utilize an earnings withhold order.

However, since an order of restitution issued by a court is not a tax or a tax penalty, the BOE's and SCO's tax collection tools are unavailable for use in collecting restitution orders owed to the State. Instead, the agencies must file the order in the civil court and use civil enforcement methods to collect the money. When the BOE or SCO attempts to collect an order of restitution as a civil money judgment, the agencies must use the collection remedies available to any creditor under the Code of Civil Procedure, which are generally inefficient and cumbersome.

Currently, BOE's orders of restitution may be collected either (1) by referring the restitution order to the Franchise Tax Board (FTB) for collection under the Court-Ordered Debt (COD) program, or (2) as a civil money judgment. The California Department of Corrections and Rehabilitation (CDCR) refer restitution orders to FTB on our behalf. The CDCR assists with the collection of restitution from those offenders sentenced to state prison or on parole. When an offender is on parole, but restitution has not been paid in full, the CDCR refers the restitution to the FTB for collection under the COD program. Additionally, the BOE is not an authorized government entity under the COD program. Authorized government entities include (1) courts, (2) county probation and revenue collections departments, (3) county or city jails or juvenile halls, (4) the CDCR, and (5) the Victim Compensation and Government Claims Board. Only a small number of restitution orders awarded to the BOE are referred to the FTB for collection under the COD program. Restitution orders awarded to the BOE in federal cases do not meet the requirements for referral under the COD provisions.

When the BOE and SCO collect an order of restitution as a civil money judgment, both agencies must use the collection remedies available to any creditor under the Code of Civil Procedure. The statutory procedures for obtaining levies and liens can delay the collection of the order of restitution, and the BOE must rely on the availability of external resources to collect amounts owed as a civil money judgment. The BOE must also pay fees for services performed by outside sources such as levy and process server fees.

For example, in order for the BOE to file a state lien on an offender's real property, the BOE must convert the Order of Restitution to an Abstract of Judgment and have the Abstract of Judgment endorsed by the court clerk. Once the Abstract of Judgment is obtained, the BOE can then file the judgment with a County Recorder's office in any county where the offender owns real property. This establishes an automatic lien against an offender's current or future real property.

To enforce an Order of Restitution on an offender's income or personal assets, the BOE must obtain a Writ of Execution. Once a Writ of Execution is obtained, the BOE must deliver this document to a levying officer (County Sheriff or Marshal) with instructions identifying which property to levy. Payment of a fee is required. The Writ of Execution allows the BOE to levy the offender's bank accounts, business receipts, and personal property to satisfy any unpaid balance remaining on a restitution order. In general, depending on the nature of the assets involved (bank accounts, wages and vehicles), the civil collection process can take anywhere from 90 days to one year from the date of seizure to the date of the auction to complete.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

Currently, restitution orders are not maintained on the BOE's two automated systems—the Integrated Revenue Information System (IRIS) and the Automated Compliance Management System (ACMS). Instead, restitution orders are monitored and collected separately from tax and fee liabilities.

#### PROPOSED LAW

This bill would amend and add Sections 7101 and 7157 (sales and use tax), and 8351 and 8407, respectively (motor vehicle fuel tax), add Sections 30483 (cigarette and tobacco products tax), and 60709 (diesel fuel tax), and amend Section 30474 of, the Revenue and Taxation Code, to provide both the BOE and SCO with express authority to collect and deposit an order of restitution, awarded to the State of California in criminal proceedings, in the same manner as tax liabilities.

#### BACKGROUND

During the 2010 Legislative session, the FTB sought and was granted similar authority for enhancing collections of restitution orders. Enactment of Assembly Bill 1530 (Stats. 2010, Chapter 359, Skinner) allows FTB to collect restitution orders or any other amounts awarded to the FTB by a court of competent jurisdiction (federal or state court) in criminal proceedings in the same manner and with the same priority as tax liabilities. This bill passed the Assembly with a 78-0 vote and the Senate with a 30-2 vote.

#### COMMENT

This change in law would:

- Streamline and accelerate the BOE's collection process on orders of restitution received in criminal cases; and,
- Utilize the efficient collection tools available to both the BOE and SCO for tax administration, thereby improving the collection process for orders of restitution awarded to the BOE in criminal proceedings.

#### COST ESTIMATE

**Orders of Restitution.** The BOE would incur one-time costs to modify existing computer systems and processes to incorporate orders of restitution into taxpayer accounts. These costs are estimated to be approximately \$106,000.

The remaining provisions of the bill involve tasks and costs which are absorbable.

#### REVENUE ESTIMATE

Except for the Orders of Restitution provisions, this measure would have a negligible impact on state and local revenues and that would be due to some additional taxpayer claims for reimbursement of bank charges and third party check charges (RTC Section 7096).

**Orders of Restitution.** The BOE uses a manual process for tracking restitution orders awarded for felony and misdemeanor cases. Since 2000, the BOE has been awarded 100 orders of restitution for felony cases. Of those 100 cases, 34 cases have been paid in full for a total amount collected of \$8,577,400. The remaining 66 cases, however, are unpaid, for a total uncollected amount of \$31,619,028. Four of the 100 felony cases

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*



represent Federal Court ordered restitution totaling \$5,023,980; no payments have been received for these four cases.

Since July 2008, the BOE has been awarded 51 misdemeanor orders of restitution. Of those 51 cases, 18 have been paid in full for a total amount collected of \$328,388. The remaining 33 cases, however, are unpaid, for a total uncollected amount of \$2,508,079. An additional 22 misdemeanor cases have been adjudicated and the conviction required the taxpayers to "file and pay all back taxes" as a condition for reinstatement of their seller's permit, but no specific court ordered restitution amount was set. The total outstanding liability of those 22 accounts is estimated at \$488,600 based on liability on record at the time the BOE received the referral and liability due at the time of adjudication, reinstatement or close out of the account. Of the total uncollected restitution of \$34,615,707 (\$31,619,028 uncollected felony cases + \$2,508,079 uncollected misdemeanor cases + \$488,600 uncollected misdemeanor cases without specified restitution amount), the BOE anticipates collecting 5 percent of that amount, or \$1,730,785 as a result of this bill. In determining the 5 percent, BOE staff considered its limited ability to collect an order of restitution debt due to the offender's incarceration, prior asset forfeiture, and payment of restitution to additional victims. In addition, we considered the BOE's collection return on aged accounts receivable.

In estimating BOE's ongoing revenue, an annual average number of cases and average dollar amount was computed. For felony cases, during a 10-year period, the BOE received 100 restitution orders for a total dollar amount of \$40,196,428 (\$8,577,400 + \$31,619,028). This computes to an annual average number of cases of 10 (100/10) and an average dollar amount of \$4,019,643 (\$40,196,428/10). For misdemeanor cases, over a 2-year period, the BOE received 73 restitution orders for a total dollar amount of \$3,325,067 (\$328,388 + \$2,508,079 + \$488,600). This computes to an annual average number of cases of 36 (73/2) and an average dollar amount of \$1,662,533 (\$3,325,067/2).

#### REVENUE SUMMARY

The total average dollar amount for restitution is \$5,682,176 annually (\$4,019,643 + \$1,662,533). Of the \$5,682,176, BOE anticipates collecting 20 percent annually, or \$1,136,435.

Analysis prepared by:	Sheila T. Waters	916-445-6579	05/11/11
Revenue estimate by:	Randy Silva	916-324-2684	
Contact:	Margaret S. Shedd	916-322-2376	
Is			1424ab032211stw.doc

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*